

DEPARTMENT OF TRADE AND INDUSTRY

REGULATIONS IN TERMS OF THE NATIONAL CREDIT ACT, 34 OF 2005

No. 489 of 31 May 2006

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## CHAPTER 1 – INTERPRETATION AND APPLICATION OF ACT

### 1. Definitions

In these regulations, any word or expression defined in the Act bears the same meaning as in the Act and –

“**accounting officer**” means a person appointed and fulfilling the duties and responsibilities set out in the Close Corporations Act, 69 of 1984;

“**annual financial statements**” means the annual financial statements as required for each specific registrant in terms of applicable legislation. Registrants who are not required by statute to submit annual financial statements must conform with the requirements as set out in the Close Corporations Act 69 of 1984 when required to submit such annual financial statements;

“**auditor**” means a person appointed and fulfilling the duties and responsibilities as set out in the Companies Act, 61 of 1973;

“**debt counselling**” means performing the functions contemplated in section 86 of the Act;

“**debt counsellor**” means a person who is required to be registered in terms of section 44 of the Act to perform the service of debt counselling;

**“delivered”** unless otherwise provided for, means sending a document by hand, by fax, by e-mail, or registered mail to an address chosen in the agreement by the proposed recipient, if no such address is available, the recipient’s registered address. Where notices or applications are required to be delivered to the National Consumer Tribunal, such delivery shall be done in terms of the Tribunal’s rules. Where notices or applications are required to be delivered to the National Credit Regulator, such delivery shall be done by way of hand, fax, e-mail or registered mail to the registered address of the National Credit Regulator;

**“general management or control”** when referring to juristic persons means the directors of a company registered in terms of the Companies Act 61 of 1973, the members of a close corporation, registered in terms of the Close Corporations Act 69 of 1984, for all other juristic persons, the individuals who perform a similar function(s) to the board of directors;

**“Ministerial Notice”** means a notice published by the Minister in the *Government Gazette*, in terms of the Act or these Regulations; and

**“the Act”** means the national Credit Act, 2005 (Act No. 34 of 2005)

## **2. Application of Act**

An application by the consumer in terms of section 4(1)(d) of the Act for exemption of a credit agreement in terms of which the credit provider is situated outside the Republic, must be submitted to the Minister by completing Form 1.

## **3. Extensions of prescribed time periods**

Where a particular number of business days are prescribed, the National Credit regulator, may on good cause shown, extend the number of days.

# **CHAPTER 2 – REGISTRATION REQUIREMENTS, CRITERIA AND PROCEDURES**

## ***Part A – Registration requirements for all registrants***

### **4. Application for registration**

(1) A person who applies for registration in terms of section 45 of the Act must submit to the National Credit Regulator:

(a) A completed application in –

(i) Form 2, if applying for registration as a credit provider;

Form 3, if applying for supplementary registration as a provider of developmental credit;

(ii) Vorm 3, as aansoek vir aanvullende registrasie as verskaffer van ontwikkelingskrediet gedoen word

(iii) Form 4, if applying for registration as a debt counsellor; or

(iv) Form 5, if applying for registration as a credit bureau.

- (b) Any additional documents required in the relevant application form; and
  - (c) The applicable fee as set out in a Ministerial Notice.
- (2) A person who applies at the same time for registration as a credit provider and for supplementary registration as a provider of developmental credit must satisfy the requirements for both applications.
- (3) A person who applies for registration must provide any information required by the National Credit Regulator in terms of section 45(2) of the Act, within 15 business days after the request is delivered to the applicant.

#### **5. Disqualification of natural person from registration**

If a natural person who exercises general management or control over the registrant, whether alone or in conjunction with others, becomes disqualified from individual registration in terms of section 46(3) of the Act, that person must provide the National Credit Regulator and the registrant with notification by completing Form 6 and submitting it within 30 business days of becoming disqualified.

#### **6. Conditions of registration**

The National Credit Regulator may propose any conditions on the registration of an applicant as contemplated in section 48(3) of the Act by delivering a notice contained in Form 7 to the applicant by hand or registered mail.

#### **7. Review of conditions of registration**

A registrant may on application to the National Credit Regulator in terms of section 49(1)(a) of the Act, apply for the review or variation of any condition of registration by submitting:

- (a) a completed Form 8.
- (b) the application fee as set out in Schedule 2.

#### **8. Certificate of registration**

A registration certificate or duplicate registration certificate issued in terms of section 52(1) of the Act must be in Form 9 and must specify the information contained in section 52(2) as well as the following additional information:

- (a) identity number of the registrant in the case of a natural person, or the registration number in the case of a juristic person; provided that in the case of a partnership, the words "trading in partnership" must be specified;
- (b) registration number of the registrant issued by the National Credit Regulator;
- (c) signature of a duly authorised representative of the National Credit Regulator;
- (d) certificate number;
- (e) date on which the certificate was issued.

### ***Part B – Cancellation of registration***

## **9. Voluntary cancellation of registration**

A registrant may voluntarily cancel its registration by submitting a completed Form 10 to the National Credit Regulator.

### ***Part C – Debt Counsellor***

## **10. Further criteria for registration as a debt counsellor**

A person who applies for registration as a debt counsellor must meet the following further requirements –

- (a) Education:
  - (i) a Grade 12 certificate or equivalent Level 4 qualification issued by the South African Qualifications Authority; and
  - (ii) successful completion of a debt counselling course approved by the National Credit Regulator and provided by an institution approved by the National Credit Regulator.
  
- (b) Experience and Competence:
  - (i) a minimum of two years working experience in any of the following fields;
    - (aa) consumer protection, complaints resolution or consumer advisory service;
    - (bb) legal or para-legal services; or
    - (cc) accounting or financial services;
    - (dd) education or training of individuals;
    - (ee) counselling of individuals; or
    - (ff) general business environment.
  - (ii) demonstrated ability to:
    - (aa) manage his/her own finances at the time of applying for registration.
    - (bb) berading en oordrag vaardighede te verskaf.

### ***Part D – Compliance procedures***

## **11. Receiving of funds by a debt counsellor**

A debt counsellor who receives or intends to receive monies on behalf of a consumer and/or distributes such funds to credit providers in terms of debt restructuring, must comply with the required legislation and must advise the National Credit Regulator of its receiving or intention to receive and/or its distributing or intention to distribute such funds.

## **12. Appointment of inspectors and investigators**

The Chief Executive Officer of the National Credit Regulator must issue an inspector or investigator appointed in terms of section 25 of the Act with a certificate prescribed in Form 11.

## **13. Notice to unregistered persons who are conducting registered activities**

A notice in terms of section 54(l) of the Act must be in Form 12 and contain the following information in addition to the requirements set out in section 54(3):

- (a) the provisions contained in the Act which require that the person or association be registered to engage in that activity;
- (b) the date of the notice;
- (c) the section of the Act in terms of which the notice has been issued, together with a description of the section; and
- (d) a statement of the right to object to the notice in terms of section 56 of the Act.

## **14. Compliance notice to registrants**

A compliance notice issued in terms of section 55 of the Act must be in Form 13 and contain the following information in addition to the information set out in section 55(3):

- (a) the section of the Act in terms of which the notice has been issued, together with a description of the section;
- (b) the date of the notice;
- (c) a statement of the right to object to the notice in terms of section 56 of the Act.

## **15. Objection to notices**

An application to review a notice issued in terms of section 54 or 55 of the Act must be in Form 14.

## **16. Administrative fines**

- (1) For the purposes of section 151(4)(b) of the Act:
  - (a) the annual turnover of a credit bureau is the total amount of fees and income generated during the immediately preceding financial year in respect of activities relating to the National Credit Act undertaken by the credit bureau;
  - (b) the annual turnover of a debt councillor is the total amount of fees and income generated during the immediately preceding financial year in respect of activities relating to the National Credit Act undertaken by the debt councillor;
- (2) for the purpose of calculating the annual turnover of the previous financial year in respect of subsection 1 above, the National Credit Regulator will require the following information:
  - (a) audited financial statements in the case of a juristic person;

- (b) in cases where no such financial statements are available, the Chief Executive Officer of the registrant is required to provide a statement to the Tribunal certifying the annual turnover of the registrant based upon all information available at the time that such a statement is made;
- (c) in cases where no such financial statements are required by law, the statistical returns as set out in Regulation 64 will be used.

## **CHAPTER 3 – CONSUMER CREDIT POLICY**

### ***Part A – Credit Information***

#### **17. Retention periods for credit bureau information**

- (1) The consumer credit information as per the following Table may be displayed and used for purposes of credit scoring or credit assessment for a maximum period as indicated:

<b>Categories of Consumer Credit Information</b>	<b>Description</b>	<b>Period for which Information must be retained from date of commencement of the event</b>
<b>1. Details and results of disputes lodged by consumers</b>	Number and nature of complaints lodged and whether complaint was rejected.  No information may be displayed on complaints that were upheld	18 months
<b>2. Enquiries</b>	Number of inquiries made on a consumer's record, including the name of the entity / person who made the enquiry and a contact person if available	2 years
<b>3. Payment Profile</b>	Factual information pertaining to the payment profile of the consumer	5 years
<b>4. Adverse information</b>	Qualitative information on consumer behaviour	1 year
<b>5. Debt Restructuring</b>	As per section 86 of the Act, an order given by the Court or Tribunal	Until a clearance certificate is issued
<b>6. Civil court judgements</b>	Civil court judgements including default judgement	The earlier of 5 years or until the judgment is rescinded by a court or abandoned by the credit provider in terms of section 86 of the Magistrates' Act, 32 of

<b>7. Administration Orders</b>	As per the court order	The earlier of 10 years or until order is rescinded by a court order
<b>8. Sequestration</b>	As per the court order	The earlier of 10 years or until rehabilitation order is granted
<b>9. Liquidations</b>	As per the court order	Unlimited period
<b>10. Rehabilitation Orders</b>	As per the court order	5 years

- (2) The date of commencement of the event is the date on which the relevant order was given or the date on which the conduct occurred which resulted in the listing;
- (3) Adverse information is information which is indicative of the consumer's payment behaviour, based on the subjective opinion of the person reporting the information;
- (4) Payment profile refers to the consumer's payment history in respect of a particular transaction.

#### **18. Maintenance and retention of consumer credit information**

- (1) Records of consumer credit information must be maintained in accordance with the following standards:
  - (a) identified by the consumer's identity number or passport number, or where no identity number or passport number is available for a particular person, any other reasonable method to identify the record;
  - (b) collected, processed and distributed in a manner that ensures that the records remain confidential and secure;
  - (c) protected against accidental, unlawful destruction and unlawful intrusion;
  - (d) protected against loss or wrongful alteration; and
  - (e) protected against unauthorised disclosure or access by any unauthorised person.
- (2) The credit bureau must take all reasonable steps to ensure that all records are kept up to date.
- (3) Consumer credit information relating to the following subjects may not be contained on the records of the credit bureau:
  - (a) race
  - (b) political affiliation;

- (c) medical status or history;
  - (d) religion or thought, belief or opinion;
  - (e) sexual orientation, except to the extent that such information is self-evident from the record of the consumer's marital status and list of family members; and
  - (f) membership of a trade union, except to the extent that such information is self-evident from the record of the consumer's employment information.
- (4) The prescribed purposes, other than for purposes contemplated in the Act, for which a report may be issued in terms of section 70(2)(g), are:
- (a) an investigation into fraud, corruption or theft, provided that the South African Police Service or any other statutory enforcement agency conducts such an investigation;
  - (b) fraud detection and fraud prevention services;
  - (c) considering a candidate for employment in a position that requires trust and honesty and entails the handling of cash or finances;
  - (d) an assessment of the debtors book of a business for the purposes of:
    - (i) the sale of the business or debtors book of that business; or
    - (ii) any other transaction that is dependent upon determining the value of the business or the debtors book of that business;
  - (e) setting a limit of service provision in respect of any continuous service;
  - (f) assessing an application for insurance;
  - (g) verifying qualifications and employment;
  - (h) obtaining consumer information to distribute unclaimed funds, including pension funds and insurance claims;
  - (i) tracing of a consumer by a credit provider in respect of a credit agreement entered into between the consumer and the credit provider;
  - (j) developing of a credit scoring system by a credit provider or credit bureau.
- (5) Should a report be required for a purpose set out in sub-regulation (4)(c) or (e) to (g), the consent of the consumer must be obtained prior to the report being requested;
- (6) In addition to the consumer credit information contemplated in section 70(1) of the Act, a registered credit bureau may receive, compile and report only the following information in respect of a consumer:
- (a) payment history and status in respect of continuous services;

- (b) information that is relevant for the purpose of credit fraud detection and prevention;
  - (c) payments made by a consumer in respect of a debt, where the debt has been ceded or sold by the credit provider to another party;
  - (d) information that is not related to and not intended for the purpose of providing consumer credit, provided that the consumer's consent has been obtained to use the information for such purpose and to submit, compile and report such information.
- (7) In addition to the sources of consumer credit information contemplated in section 70(2) of the Act, a registered credit bureau may receive consumer credit information in respect of a consumer from any person, provided the originating source of the information is one of the following persons:
- (a) An organ of state, a court or judicial officer;
  - (b) Any provider of a continuous service as defined in the Act;
  - (c) A person providing long term and short term insurance;
  - (d) Entities involved in fraud investigation;
  - (e) Educational institutions;
  - (f) Debt collectors to whom book debt was ceded or sold by a credit provider.
- (8) The maximum fees that may be charged for assessing and inspecting any file or information as contemplated in section 72(1)(b)(ii) of the Act is set out in Schedule 2.

**19. Submission of consumer credit information to credit bureau**

- (1) The information submitted to a credit bureau must contain information in respect of a consumer:
- (a) Initials and surname or full names and surname;
  - (b) SA identity number, or if the consumer does not have an identity number, the passport number and date of birth;
- (2) In as far as it is available, the following information should also be included when consumer information is submitted to a credit bureau:
- (a) Residential address and telephone number;
  - (b) Details of employer and place of work, if self employed or unemployed, a statement to that effect.
- (3) All sources of information as set out in section 70(2) of the Act and Regulation 18(7) must take reasonable steps to ensure that the information reported to the credit bureau is accurate, up-to-date, relevant, complete, valid and not duplicated.

- (4) All sources of information as set out in section 70(2) of the Act and Regulation 18(7) must give the consumer at least 20 business days notice of its intention to submit the following adverse information concerning that person to a credit bureau:
  - (a) classification of consumer behaviour, including classifications such as 'delinquent', 'default', 'slow paying', 'absconded' or 'not contactable';
  - (b) classifications related to enforcement action taken by the credit provider, including classifications such as handed over for collection or recovery, legal action, or write-off.
- (5) No source of information as set out in section 70(2) of the Act and Regulation 18(7) may submit information to a credit bureau that has prescribed in terms of the Prescription Act 68 of 1969.

### ***Part B – Consumer rights***

#### **20. Right to access and challenge credit records and information**

- (1) When a consumer requests a credit report it must disclose the same information that will be displayed to other parties when such report is provided;
- (2) If the accuracy of the consumer credit information has been challenged by a consumer in terms of section 72(3)(a) and (b) of the Act, the person to whom the challenge has been made must take the steps set out in section 72(3) within 20 business days after the filing of the challenge.
- (3) If the information is removed in terms of section 72(3)(b), the credit bureau must inform the consumer and all parties to whom the information has been reported in the previous 20 business days about the inaccuracy as well as all other credit bureaus.

### ***Part C – Credit market practices***

#### **21. Required contents for advertising practices**

- (1) If an advertisement refers only to the availability of credit, and no reference is made to costs, interest rates or monthly repayment, no further disclosure of cost of credit, interest rate percentage or monthly repayment is required.
- (2) If an advertisement discloses only the interest rate or the maximum and minimum rates where a range is applicable, and no reference is made to other costs of credit, no further information has to be disclosed, but the advertisement must indicate that an initiation fee and service fee will be charged, if applicable;
- (3) If an advertisement, other than an advertisement referred to in sub-regulation (2), discloses a monthly instalment, or any other cost of credit, the advertisement must also disclose the following:
  - (a) instalment amount;
  - (b) number of instalments;

- (c) total amount of all instalments, including interest, fees and compulsory insurance; and
  - (d) interest rate; and;
  - (e) residual or final amount payable (if any).
- (4) A statement of comparison of credit cost, as described in section 76(4)(d) of the Act, must contain all the information as set out in sub-regulation (3), for each alternative being compared.
- (5) If an advertisement is for specific goods to be purchased on credit, services to be rendered on credit or a specific amount of credit obtainable and reference is made to repayment amounts or cost of credit, all the information as contained in sub-regulation (3) must also be disclosed.
- (6) Any of the following statements or phrases, or any wording that has substantially the same meaning, may not form part of any advertisement or direct solicitation for credit
- (a) "no credit checks required";
  - (b) "blacklisted consumers welcome";
  - (c) "free credit"
- (7) If any of the following qualitative statements to the cost of credit or any wording that has substantially the same meaning, is made:
- (a) "cheap credit";
  - (b) "affordable credit";
  - (c) "low cost credit"

specific information must be disclosed on the cost of credit, as per sub-regulation (2) or sub-regulation (3).

- (8) A direct solicitation may not contain the expressions "loan guaranteed", "pre-approved" or similar statements except when the credit granted is not subject to any credit assessment after acceptance by the consumer.

## **22. Required format for advertising practices**

- (1) The information required to be disclosed in terms of regulation 20(2) and 20(3) must be:
- (1) Die informasie vereis om ingevolge regulasie 20(2) en 20(3) te verstrek moet wees:
- (a) of no smaller font size than the average font size used in the advertisement;
  - (b) displayed together;

- (2) The disclosure of the information in terms of regulation 21(2) and 21(3) for purposes of television advertisements may be a combination of visual and audio disclosure provided that equal prominence is given to all the information required, equivalent to the prominence given to all other elements of the advertisement.
- (3) Audio advertisements must provide prominence to all the information to be disclosed in terms of regulation 21(2) and 21(3), equivalent to the prominence given to all other elements of the advertisement.

### ***Part D – Over-indebtedness, reckless lending and debt counselling***

#### **23. Reckless lending**

Any credit extended in terms of -

- (a) a school loan or a student loan;
- (b) an emergency loan;
- (c) a public interest credit agreement;

must be reported by the credit provider to the National Credit Regulator within 30 business days of signature thereof, alternatively at the end of the month in which the agreement was concluded, by completing and submitting Form 15.

#### **24. Application for debt review**

- (1) A consumer who wishes to apply to a debt counsellor to be declared over-indebted must:
  - (a) Submit to the debt counsellor a completed Form 16; or
  - (b) Provide the debt counsellor with the following information:
    - (i) personal details, including:
      - (aa) name, initials and surname, identity number, if the consumer does not have an identity number, the passport number and date of birth;
      - (bb) postal and physical address;
      - (cc) contact details.
    - (ii) all income, inclusive of employment income and other sources of income (specify)
    - (iii) monthly expenses, inclusive of, but not limited to:
      - (aa) taxes;
      - (bb) unemployment insurance fund;

- (cc) pension;
  - (dd) medical Aid;
  - (ee) insurance;
  - (ff) court orders;
  - (gg) other (specify).
- (iv) List of all debts, disclosing monthly commitment, total balance outstanding, original amount and amount in arrears (if applicable) inclusive of, but not limited to:
- (aa) home loans;
  - (bb) furniture retail;
  - (cc) clothing retail;
  - (dd) personal loans;
  - (ee) credit card;
  - (ff) overdraft;
  - (gg) educational loans;
  - (hh) business loans;
  - (ii) car finances and leases;
  - (jj) sureties signed;
  - (kk) other (specify).
- (v) Living expenses, inclusive of, but not limited to:
- (aa) groceries;
  - (bb) utility and continuous service;
  - (cc) school fees;
  - (dd) transport costs;
  - (ee) other (specify).
- (vi) A declaration and undertaking to commit to the debt restructuring.
- (vii) A consent that a credit bureau check may be done.

- (viii) Confirmation that the information is true and correct.
  - (c) Submit to the debt counsellor the documents specified in Form 16.
  - (d) Pay the debt counsellor's fee, if any, provided that such fee may not exceed the maximum fee prescribed in Schedule 2.
- (2) Within five business days after receiving an application for debt review in terms of section 86(1) of the Act, a debt counsellor must deliver a completed Form 17.1 to all credit providers that are listed in the application and every registered credit bureau;
  - (3) The debt counsellor must verify the information provided in terms of subsection (1) above by requesting documentary proof from the consumer, contacting the relevant credit provider or employer or any other method of verification.
  - (4) In the event that a credit provider fails to provide a debt counsellor with corrected information within five business days of such verification being requested, the debt counsellor may accept the information provided by the consumer as being correct;
  - (5) A notice contemplated in sub-regulation (2) must be sent by fax, registered mail or e-mail provided that the debt counsellor keeps a record of the date, time and manner of delivery of the notice;
  - (6) Within 30 business days after receiving an application in terms of section 86(1) of the Act, a debt counsellor must make a determination in terms of section 86(6);
  - (7) When assessing the consumer's application in terms of section 86(6)(a) of the Act, the debt counsellor must refer to section 79 and further consider the following:
    - (a) A consumer is over-indebted if his/her total monthly debt payments exceed the balance derived by deducting his/her minimum living expenses from his/her net income;
    - (b) Net income is calculated by deducting from the gross income, statutory deductions and other deductions that are made as a condition of employment;
    - (c) Minimum living expenses are based upon a budget provided by the consumer, adjusted by the debt counsellor with reference to guidelines issued by the National Credit Regulator.
  - (8) In making a determination that a particular debt is reckless, as per section 86(6)(b) of the Act, a debt counsellor must refer to section 80 of the Act and further consider the following:
    - (a) the level of indebtedness of the consumer after that particular agreement was entered into; and
    - (b) whether, when that particular credit agreement was entered into, the total debt obligations including the new agreement exceeded the net income reduced by minimum living expenses;

- (c) the consumers' bank statement, salary or wage advice and records obtained from a credit bureau;
  - (d) any guidelines published by the National Credit Regulator proposing evaluative mechanisms, models and procedures in terms of section 82 of the Act;
- (9) Any arrangement made by the debt councillor with credit providers must be reduced to writing and signed by all credit providers mentioned, the debt councillor and the consumer.
  - (10) After completion of the assessment, the debt councillor must submit Form 17.2 to all the affected credit providers and all registered credit bureaux within 5 business days;
  - (11) When making a determination in terms of sections 79(3)(b)(ii) and 80(3)(b)(ii), the value of a credit guarantee is 0.

## **25. Letter of rejection**

If a debt councillor finds that a consumer is not over-indebted and makes a finding in terms of section 86(7)(a) of the Act, the debt councillor must provide the consumer with a letter of rejection, containing the following information:

- (1) Consumer's full names, surname and identity number, if the consumer does not have an identity number, the passport and date of birth;
- (2) Name, contact details and NCR registration number of debt councillor;
- (3) The basis for finding the consumer not to be over-indebted, including –
  - (a) calculated income considered;
  - (b) statutory and other deductions considered;
  - (c) living expenses considered;
  - (d) ander skuld in ag geneem;
- (4) A copy of the assessment form;
- (5) A statement advising the consumer of his/her right to approach the court in terms of section 86(9) within 20 business days for an order to be declared over-indebted, have agreements declared reckless and/or restructuring his/her debt obligations;
- (6) A statement advising the consumer that the application for debt review will be removed from all registered credit bureaux within 5 business days which will result in credit providers being entitled to take legal steps against the consumer.

## **26. Debt restructuring by court order**

- (1) An application in terms of section 86(9) of the Act must be submitted to court within 20 business days after the debt councillor has provided the consumer with a letter of rejection.

## **27. Clearance Certificate**

A debt counsellor must issue a clearance certificate in Form 19 if the consumer has fully satisfied all the debt obligations under every credit agreement that was subject to the debt re-arrangement order or agreement, in accordance with that order or agreement.

# **CHAPTER 4 – CONSUMER CREDIT AGREEMENTS**

## ***Part A – Pre-agreement disclosure***

### **28. Pre-agreement statement and quotation for small agreements**

- (1) The pre agreement statement and quotation given to a consumer in terms of section 92(1) of the Act must comply with the following requirements:
  - (a) The pre-agreement statement and quotation may be contained in one document or in two separate documents;
  - (b) The pre-agreement statement and quotation must be in the format set out in Form 20;
  - (c) For purposes of electronic or telephone originated pre-agreement statement and quotation for small agreements, the electromagnetic recording and transcribing of the documents will be sufficient, provided that the consumer is supplied with copies of the documents within a reasonable time.
- (2) If any section of the pre-agreement statement and quotation as prescribed in this section does not apply to the particular type of credit agreement, such section may be omitted from the statement.
- (3) If any category of fee or charge that is provided for is not levied by the credit provider, or if no security, insurance or similar requirements are made by the credit provider, the sections dealing with such matters may be omitted.
- (4) The following definitions will apply to Form 20, in respect of credit facilities that meet the criteria for small agreements:
  - (a) Credit advanced must reflect the total value of the credit facility;
  - (b) Instalment must reflect the minimum instalment required per the agreement, on the assumption that the total amount of the facility is utilized on the first day of the agreement; and
  - (c) Total of all instalments must reflect the total of all instalments plus the full repayment of the facility at the end of 12 months or at the end of the term of the agreement, whichever is the earliest.

### **29. Pre-agreement statement and quotation for intermediate or large agreements**

- (1) The quotation given to the consumer in terms of section 92(2) of the Act must comply with the following requirements:

- (a) the quotation must be in the format set out in Form 20.1, or may be in the format of Form 20 if the Credit Provider provides both small and intermediate credit agreements with similar features, or in any other form complying with (c) and (d) below;
  - (b) the quotation may be contained in the same document as the pre-agreement statement or in a separate document, provided that if the quotation is included in the same document as the pre-agreement statement, the quotation must be on the first page of that document;
  - (c) the quotation must be in a bordered text box and headed "Quotation."
  - (d) the information required to be disclosed in the quotation is:
    - (i) principal debt;
    - (ii) proposed distribution of principal debt with reference to items listed in section 102(1)(b) to (f) of the Act and specify any other;
    - (iii) other ongoing credit costs;
    - (iv) service fee and whether it is paid monthly, annually or on any other basis as prescribed in section 101(1)(c) of the Act;
    - (v) initiation fee;
    - (vi) rand value of interest;
    - (vii) residual or final amount payable (if any)
    - (viii) total cost of the proposed agreement;
    - (ix) annual interest rate;
    - (x) state the basis for any costs payable under section 121(3)(b)(i) of the Act if applicable;
    - (xi) state the reasonable rental to be charged in terms of section 121(3)(b)(ii) of the Act if applicable;
    - (xii) Number of instalments to be paid;
    - (xiii) Instalment amount.
- (2) For purposes of electronic or telephone originated quotation or pre-agreement statement for intermediate and large agreements, the electromagnetic recording and subsequent transcribing of the quote or pre-agreement statement will be sufficient, provided that the consumer is supplied with a copy of the quote or pre-agreement statement within a reasonable time.
- (3) The following definitions will apply to Form 20.1, in respect of credit facilities:

- (a) Credit advanced must reflect the total value of the credit facility;
- (b) Instalment must reflect the minimum instalment required per the agreement, on the assumption that the total amount of the facility is utilized on the first day of the agreement; and
- (c) Total amount repayable per Part C must reflect the total of all instalments plus the full repayment of the facility at the end of 12 months or at the end of the term of the agreement, whichever is the earliest.

### ***Part B – Form of credit agreements***

#### **30. Prescribed form for small agreement**

- (1) A document that records a small credit agreement must contain all the information as reflected in Form 20.2.
- (2) The information listed in Form 20.2 may be disclosed in the order of choice of the credit provider.
- (3) For purposes of electronic or telephone originated small agreements, the electromagnetic recording and transcribing of the agreement will be sufficient, provided that the consumer is supplied with a copy of the agreement within a reasonable time.

#### **31. Requirements for intermediate or large agreements**

- (1) The following requirements are prescribed in terms of section 93 of the Act in respect of all categories of intermediate and large agreements including developmental credit agreements:
  - (a) All the information that is disclosed in a credit agreement must be comprehensive, clear, concise and in plain language.
  - (b) The credit agreement may be set out in one or more documents, provided that if it is set out in more than one document, the document signed by the consumer, must incorporate all other documents by clear reference and a copy of all documents must be given to the consumer.
  - (c) The lettering of the credit agreement must be legible and clear enough to ensure that it remains legible and clear if photocopied or faxed;
  - (d) The lettering of the matters that are required to be disclosed in terms of sub-regulation (2) must be given equal prominence to the body of the rest of the document;
  - (e) If the quotation does not form part of the credit agreement, the information that is required to be disclosed in the quotation must be disclosed in the credit agreement on the first page of the agreement in a bordered tabular format titled "Cost of Credit";
  - (f) In the Cost of Credit table, the credit provider must also disclose the information prescribed in sub-regulation (2)(j) and (k).

- (2) Intermediate and large agreements must contain the following information, if applicable:
- (a) The type of agreement;
  - (b) The credit provider's name, contact details and registration number with the National Credit Regulator.
  - (c) Cost of credit reflecting the following:
    - (i) The amount of the principal debt, including the amount deferred in terms of the credit agreement as well as the nature and amount of the following fees and charges where they have been included in the principal debt in terms of the credit agreement:
      - (aa) the cost of an extended warranty agreement;
      - (bb) delivery, installation and initial fuelling charges, limited to the actual cost of these items;
      - (cc) connection fees, levies or charges;
      - (dd) taxes, license or registration fees.
    - (ii) If the amount deferred in terms of the credit agreement is not ascertainable, the maximum amount deferrable;
    - (iii) The proposed distribution of the principal debt and to whom each amount is to be paid;
    - (iv) If the distribution of the amount deferred in terms of the credit agreement is subject to certain conditions, such conditions;
    - (v) If the credit is provided by the supplier of goods, immovable property or services, the cash price of such goods, immovable property or services;
    - (vi) The amount of any initiation fee;
    - (vii) The option of having the initiation fee paid upfront;
    - (viii) The amount of any service fee;
    - (ix) The basis upon which service fee is payable, if annual, a indication that it will be added to the outstanding balance;
    - (x) The annual rate at which interest is levied in respect of the agreement expressed as a percentage and calculated in accordance with Regulation 40;
    - (xi) The rand amount of interest charges over the term of the agreement, based on the rate at inception of the agreement in the case of a variable interest rate;

- (xii) Whether the interest rate is fixed or variable, and if variable, the reference rate to which the interest rate is fixed;
  - (xiii) The nature of any insurance contract entered into, pursuant to section 106 of the Act;
  - (xiv) The nature of any additional insurance contract entered into, pursuant to section 106 of the Act;
  - (xv) The cost to the consumer of the insurance provided;
  - (xvi) The amount of any fee, commission, remuneration or benefit receivable by the credit provider or any other person in relation to the insurance;
  - (xvii) The consumer's right to waive a policy proposed by the credit provider and substitute a policy of the consumer's own choice, subject to section 106 of the Act;
  - (xviii) The costs of additional insurance and whether such cost is charged by monthly or annual premiums.
  - (xix) The amount of any default administration charges which may be imposed on default by the consumer or the manner in which such charges will be calculated;
  - (xx) The circumstances in which such default administration charges will be imposed;
  - (xxi) The amount of any collection costs which may be charged in respect of the enforcement of a consumer's monetary obligations in terms of the credit agreement or the manner in which such costs will be calculated;
  - (xxii) The circumstances in which such collection costs will be charged.
- (d) All fees levied by the credit provider must be disclosed in the agreement together with the date on which they will be levied and any other information relating to the charging of such fees;
  - (e) If the amounts that have to be disclosed are not ascertainable, the credit provider must disclose such amounts based on estimated information, provided that such estimates are reasonable in the circumstances of the proposed credit agreement;
  - (f) If the amounts disclosed are based on estimated information, the credit provider must clearly disclose this to the consumer by indicating which amounts are based on estimated information and disclosing such estimated information;
  - (g) The sum of the amounts disclosed in respect of the initiation fee, service fee, interest and cost of credit insurance, provided that, to the extent that any amount is not ascertainable, the credit provider must clearly indicate the method of calculating the amount;

- (h) The sum of the principal debt, initiation fee, service fee, interest and cost of credit insurance, provided that, to the extent that any amount is not ascertainable, the credit provider must clearly indicate the method of calculating the amount;
- (i) If the interest rate or credit fees and charges that are payable in terms of the agreement may be changed, a statement to that effect must be disclosed together with the manner and the timeframes within which the consumer must be notified of any changes to the interest rate or fees and charges in accordance with section 104 of the Act;
- (j) The amount of the repayment(s), or if not a fixed or determinable amount, the method of calculating the repayment amount;
- (k) If fixed or determinable -
  - (i) the number of repayments;
  - (ii) the frequency of the repayments;
  - (iii) when the first repayment is due;
  - (iv) if all repayment amounts are not equal, how will they differ;
  - (v) the total amount of all repayments;
  - (vi) the term or duration of the agreement;
- (l) The frequency with which the consumer will be provided with a statement of account;
- (m) The manner in which the statement will be provided;
- (n) If the credit provider has taken any form of security or mortgage in respect of the repayment of the loan, a description of the security or asset mortgaged;
- (o) Details of the implications of default by the consumer,
- (p) Details of the process that will be followed on default;
- (q) A statement notifying the consumer as comprehensively as reasonably possible about the information sharing practices in credit reporting, which must contain the following information:
  - (i) confirmation by the consumer that the credit provider may transmit to the credit bureau data about the application, opening and termination of an account;
  - (ii) the fact that information on non-compliance with terms and conditions of the credit agreement is transferred to the credit bureau;

- (iii) the name and contact details of the credit bureau or credit bureaux to which the information is transferred;
  - (iv) the fact that the credit bureau provides a credit profile and possibly a credit score on credit worthiness of the person subject to the record;
- (r) A statement of the consumer's right to:
  - (i) contact the credit bureau,
  - (ii) have the credit record disclosed; and
  - (iii) correct inaccurate information;
- (s) If applicable, the consumer's right to rescind the credit agreement in terms of section 121 of the Act.
- (t) The right of the consumer to terminate the credit agreement in terms of section 122 of the Act
- (u) A statement of the consumer's or guarantor's right to settle the agreement together with an explanation of the manner in which the amount required to settle the credit agreement is calculated in terms of section 125 of the Act.
- (v) The right of the credit provider to terminate the credit agreement in terms of section 123 of the Act;
- (w) A statement of the consumer's rights to:
  - (i) resolve a complaint by way of alternative dispute resolution;
  - (ii) file a complaint with the National Credit Regulator; or
  - (iii) make an application to the Tribunal;
- (x) If applicable, the consumer's obligations to disclose the location of goods in terms of section 97 of the Act;
- (y) If applicable, the consumer's right to surrender goods in terms of section 127 of the Act together with a description of the process to be followed in surrendering goods in terms of section 127 of the Act;
- (z) If applicable and as prescribed in terms of section 94 of the Act, the contact number at which a consumer may report the loss or theft of a card, personal identification number or other device and the extent of the consumer's liability for purchases charged to that facility after the card, personal identification code or number or other device has been lost or stolen;
- (AA) A statement of the consumer's right to prepay any amount under a credit agreement in terms of section 126 of the Act;
- (BB) A statement of the consumer's right to apply to a debt counsellor to be declared over-indebted in terms of section 86 of the Act, and the process to be followed;

- (CC) Contact details of the National Credit Regulator and the Tribunal, and in the case of the credit provider being a regulated financial institution, the contact details of the adjudicator responsible for that institution.
- (3) If any item set out in this regulation is dependant on the portion or amount of the credit utilised by the consumer, the maximum utilisation must be assumed for purposes of the required disclosure.
- (4) For purposes of electronic or telephone originated documents, the electromagnetic recording and transcribing of the documents will be sufficient, provided that the consumer is supplied with copies of the agreement within a reasonable time.

### **32. Unlawful provisions of a credit agreement**

The following common law rights or remedies that are available to a consumer may not be waived in a credit agreement:

- (a) *Exceptio errore calculi*;
- (b) *Exceptio non numerate pecuniae*.
- (c) *Exceptio non causa debiti*

### **33. Credit Insurance**

- (1) If a credit provider proposes the purchase a particular policy as envisaged in section 106(4) of the Act, such credit provider will disclose to the consumer the information set out in Form 21;
- (2) If a consumer exercises the right under section 106(4)(a) to substitute an insurance policy of the consumer's choice, the credit provider may require the consumer in terms of section 106(6)(a) and 106(6)(b) to complete Form 22 and Form 23.

### **34. Disclosure of location of goods**

- (1) In respect of a credit agreement to which section 97 of the Act applies, the consumer must disclose any changes concerning the matters listed in section 97(2) in writing to the credit provider within 10 business days after the change and deliver it to the credit provider;
- (2) When disclosing change, the consumer must complete Form 24 or provide the following information to the credit provider:
- (a) name of the consumer;
  - (b) a reference number or account number provided by the credit provider;
  - (c) the date upon which the change was effective; and
  - (d) the date of the disclosure.
- (3) On request by the credit provider, messenger of the court or the deputy sheriff, as contemplated in section 97(3), the consumer-
- (a) must provide the information in writing by completing Form 25; or

- (b) may otherwise provide the information orally.

### **35. Statement of account**

A statement of account in respect of a small agreement must be in Form 26 and must contain the following information:

- (a) The details of the credit provider, including:
  - (i) the name of the credit provider;
  - (ii) the trading name of the credit provider, if any;
  - (iii) the credit provider's registration number issued by the National Credit Regulator;
  - (iv) the physical address and postal address of the credit provider;
  - (v) the telephone number of the credit provider;
  - (vi) where relevant, the details of the bank account into which consumer's payment must be made, including name of bank, account number, branch code and reference number.
- (b) The details of the consumer, including:
  - (i) the consumer's name;
  - (ii) the consumer's account number or reference number;
  - (iii) the consumer's address;
- (c) The date of the statement;
- (d) The period covered by the statement;
- (e) Details of the agreement, including:
  - (i) the principal debt;
  - (ii) the annual rate of interest;
  - (iii) the instalment amount;
  - (iv) the frequency of the instalment;
  - (v) the balance outstanding at the date of statement;
  - (vi) whether the account is in arrears, and if so, the amount of such arrears.
- (f) A summary of the transactions that occurred during the period of the statement, including the total amount debited or credited to the account in respect of the following:

- (i) payments received;
  - (ii) fees levied;
  - (iii) interest accrued;
  - (iv) insurance costs levied;
  - (v) collection costs levied;
  - (vi) default administration costs levied;
  - (vii) legal fees incurred;
- (g) A detailed statement of each transaction that occurred during the period of the statement including the following:
- (i) opening balance from the previous statement;
  - (ii) the date of each transaction;
  - (iii) a description of the transaction;
  - (iv) the amount of the transaction and whether it is a debit or credit on the account;
  - (v) a running total;
  - (vi) the closing balance.

### **36. Changes to Interest**

A notice by the credit provider to the consumer of a change in a variable interest rate as contemplated in section 104(3)(a) of the Act, must also provide the following information:

- (a) the date on which the change took effect, or will take effect;
- (b) total interest payable under the agreement in Rand value, if ascertainable;
- (c) monthly interest payable in Rand value, if ascertainable.

### **37. Consumer's right to rescind a credit agreement**

A notice by the consumer to the credit provider to terminate a credit agreement in terms of section 121(2) of the Act must be given in writing and delivered by hand, fax, e-mail or registered mail to an address specified in the agreement, alternatively the credit provider's registered address.

### **38. Charges to other accounts**

A notice to a consumer of a charge or series of charges to be made to another account as contemplated in section 124(2) of the Act must be given to the consumer in Form 27 before the charge or first charge of the series will be made, or must be recorded electromagnetically, transcribed and delivered to the consumer and must include the following information:

- (a) a reference to the written direction by the consumer authorising the charge or series of charges, as contemplated in sections 124(1) and 90(2)(n) of the Act;
- (b) the account against which the charge or series of charges will be made;
- (c) the obligation that the charge or series of charges is intended to satisfy;
- (d) the account to which that obligation relates;
- (e) whether the charge is a single charge or a series of charges;
- (f) the amount or amounts of the charge, and the method of calculation; and
- (g) the date on which the charge or first charge in the series will be effected.

## **CHAPTER 5 – INTEREST AND FEES**

### ***Part A – Interpretation***

#### **39. Definitions**

In this Chapter-

- (1) **"Deferred amount"** means any amount payable in terms of a credit agreement the payment of which is deferred and upon which interest is calculated, or any fee, charge or increased price is payable by reason of the deferment, and
  - (a) the deferred amount includes
    - (i) any obligation of the consumer that is deferred as per section 8(3) and section 8(4) of the Act;
    - (ii) in respect of incidental credit agreements,
      - (aa) the amount on which a supplier of goods or services charges interest or a late payment fee, per section 5(2)(a) or
      - (bb) the lower price in respect of the agreements referred to in section 5(2)(b)-,
    - (iii) the amounts referred to in section 101(1)(b) to section 101(1)(g) inclusive;
    - (iv) the amounts referred to in section 102(1)(b) to section 102(1)(f);
  - (b) the deferred amount is reduced by any amount paid towards the settlement of the deferred amount, or an amount credited to the deferred amount, at the time that such payment is made, or credit falls due, and
  - (c) the date from which an amount becomes part of the deferred amount, is the date upon which such an amount becomes due or may be levied, subject to the limitations specified in the Act and these Regulations.

- (2) **"short term credit transaction"**
- (a) means a credit transaction
    - (i) in respect of a deferred amount at inception of the agreement not exceeding R8, 000; and
    - (ii) in terms of which the whole amount is repayable within a period not exceeding 6 months; and
  - (b) in terms of which an amount of money was disbursed to the consumer, to be utilised at the sole discretion of the consumer, and
  - (c) includes pawn transactions,
  - (d) but does not include credit transactions in respect of which the agreement is conditional upon
    - (i) the amount deferred being paid by the credit provider directly or indirectly to a person or juristic person that is related to the credit provider; or
    - (ii) the amount deferred being paid by the credit provider to a person or juristic person other than the consumer, except where such condition is introduced by the consumer.
- (3) **"unsecured credit transaction"** means a credit transaction in respect of which the debt is not supported by any pledge or other right in property or suretyship or any other form of personal security.

### ***Part B – General Stipulations***

#### **40. Interest calculation**

- (1) Interest may be calculated daily and may be added to the deferred amount monthly, at the end of the month, or
- (a) if interest is added to the deferred amount at an earlier day than the last day of the month,
    - (i) this earlier day may not be earlier than the date upon which the repayment is due as per the agreement; and
    - (ii) the rand amount of interest for the month must be calculated from the previous date when interest was added to the defied amount until this earlier day; and;
    - (iii) interest may not be added to the deferred amount more than once in every month;
  - (b) interest may be added to the deferred amount periodically as defined in the credit agreement, provided that such periods are no shorter than the number of days in the month during which such interest is added; or

(c) in the final month of a credit agreement, interest due may be added to the deferred amount on the final day of the agreement.

(2) The rand amount of interest for any particular day as referred to in (1),

(a) must be calculated as follows for any credit agreement other than short term credit transactions:

$$\frac{\text{Deferred amount for the day} \times \text{interest rate}}{\text{Number of days in the year}}$$

(b) must be calculated as follows for short term credit transactions:

$$\frac{\text{Deferred amount for the day} \times \text{monthly interest rate}}{\text{Number of days in the month}}$$

(c) Where:

(i) the deferred amount for the day must be calculated as the average deferred amount for the day, or as the deferred amount at a particular time in the day, as defined per the credit agreement;

(ii) the interest rate must not exceed the maximum prescribed interest rate applicable to the category of credit agreement concerned;

(iii) number of days in the year may be interpreted as either 365, or as the actual number of days in the particular year;

(iv) For short term loans, the number of days in the month may be interpreted as either 30 or as the actual number of days in the particular month.

(3) The rand amount of interest for any particular month must be calculated by adding the rand amounts of interest for all the days in that month;

(4) The manner of calculation employed by any particular credit provider may differ from the manner prescribed above, provided that the amount calculated by the institution for any year may not differ by more than 0.1% from the amount that would have resulted if calculated as prescribed in this section.

#### **41. Dates upon which fees became due and payable**

(1) Initiation fees may be levied on the date stipulated in the agreement, but not earlier than the date of approval of the credit application;

(2) Monthly service fees may be levied at the end of the month to which they relate;

(3) Annual service fees may be levied at the earlier of -

(a) the end of the year to which such fees relate, or an annual date specified in the credit agreement; or

(b) the termination of the agreement;s

- (4) Transaction based service fees may be levied at the end of the month in which the transaction occurred;
- (5) In (2), (3) and (4) above, the respective fees may be added to the deferred amount at a different day than the last day of the month, provided that this day is no earlier than the day upon which interest is added to the deferred amount, as per regulation 40 above.

***Part C – Interest applicable to different products***

**42. Maximum prescribed interest and initiation fees**

- (1) The following maximum rates of interest will apply:

**Table A: Maximum Prescribed Interest Rates**

<b>Sub-sector</b>	<b>Maximum prescribed interest rate</b>
<b>Mortgage agreements</b>	<b>[(RR x 2.2) + 5%] per year</b>
<b>Credit facilities</b>	<b>[(RR x 2.2) + 10%] per year</b>
<b>Unsecured credit transactions</b>	<b>[(RR x 2.2) + 20%] per year</b>
<b>Developmental credit agreements:–</b>	
<b>for the development of small business</b>	<b>[(RR x 2.2) + 20%] per year</b>
<b>for low income housing (unsecured)</b>	<b>[(RR x 2.2) + 20%] per year</b>
<b>Short term credit transactions</b>	<b>5% per month</b>
<b>Other credit agreements</b>	<b>[(RR x 2.2) + 10%] per year</b>
<b>Incidental credit agreements</b>	<b>2% per month</b>

**Where,**

- (a) RR indicates the reference rate, being the ruling SA Reserve Bank Repurchase Rate.
  - (b) The interest rate on short term credit transactions and incidental credit agreements must be disclosed as a monthly interest rate, in such disclosure as is required by the Act and these regulations.
- (2) The following maximum limits will apply to initiation fees:

**Table B: Maximum Initiation Fee**

<b>Sub-sector</b>	<b>Maximum Initiation Fee</b>
<b>Mortgage agreements</b>	(a) R1, 000 per credit agreement, plus 10% of the amount of the agreement in excess of R10, 000  (b) But never to exceed R5, 000
<b>Credit facilities</b>	(a) R150 per credit agreement, plus 10% of the amount of the agreement in excess of R1, 000  (b) But never to exceed R1, 000.
<b>Unsecured credit transactions</b>	(a) R150 per credit agreement, plus 10% of the amount of the agreement in excess of R1, 000  (b) But never to exceed R1, 000.
<b>Developmental credit agreements:–</b>	
<b>for the development of small business</b>	(a) R250 per credit agreement, plus 10% of the amount of the credit agreement in excess of R1, 000  (b) But never to exceed R2, 500.
<b>for low income housing (unsecured)</b>	(a) R500 per credit agreement, plus 10% of the amount of the credit agreement in excess of R1, 000  (b) But never to exceed R2, 500.
<b>Short term credit transactions</b>	(a) R150 per credit agreement, plus 10% of the amount of the credit agreement in excess of R1, 000  (b) But never to exceed R1, 000.
<b>Other credit agreements</b>	(a) R150 per credit agreement, plus 10% of the amount of the credit agreement in excess of R1, 000  (b) But never to exceed R1, 000.
<b>Incidental credit agreements</b>	Nil

**Where,**

- (a) The amount of the agreement is the amount deferred in terms of the agreement.

#### **43. Supplementary conditions on the application of the maximum initiation fee**

The following supplementary conditions shall apply on the application of the maximum initiation fee:

- (1) An initiation fee may be charged at the registration of a replacement mortgage in respect of a transfer from one credit provider to another, without there being a transfer of ownership of the mortgaged property, only if-
  - (a) the transfer is done at the request of the consumer; and
  - (b) the levying of the fee and the amount of the fee has been disclosed to the consumer by the acquiring credit provider before the consumer has agreed to the transfer.
- (2) No initiation fee may be charged on credit agreements as envisaged in section 101(2).
- (3) Initiation fee may never exceed 15% of the principal debt.

#### **44. Maximum service fee**

The maximum. monthly service fee, prescribed in terms of section 105(1) of the Act, is R50.

- (1) When an annual service fee is levied, the applicable limit is
  - (a) the monthly limit on the service fee, multiplied by 12; and
  - (b) where the period for which the fee is levied is less than 12 months, the monthly service fee multiplied by the number of months in such a period.
- (2) If a service fee is payable on a transaction basis, or on a combination of periodic and transaction bases, the total of such fees may not exceed the monthly or annual limit.

#### **45. Periodic review of limitations on fees and interest rates**

The National Credit Regulator must -

- (1) perform a review of interest rates and cost factors at intervals of no more than 3 years and advise the Minister of any changes that may be required;
- (2) when making a recommendation to the Minister in terms of this regulation, consider:
  - (a) ruling interest rates and fees;
  - (b) cost of providing such credit;
  - (c) the choice available to consumers in the particular category of credit agreements, between different products and different credit providers; and
  - (d) the impact upon access to finance for persons referred to in section 13(a) of the Act.

### ***Part D – Other fees costs and charges***

#### **46. Default Administration Charges**

The credit provider may require payment by the consumer of default administration charges in respect of each letter necessarily written in terms of Part C of Chapter 6 of the Act. Such payment may not exceed the amount payable in respect of a registered letter of demand in undefended action in terms of the Magistrates' Courts Act, 1944 in addition to any reasonable and necessary expenses incurred to deliver such letter.

#### **47. Collection Costs**

For all categories of credit agreement, collection costs may not exceed the costs incurred by the credit provider in collecting the debt -

- (a) to the extent limited by Part C of Chapter 6 of the Act, and
- (a) tot die mate beperk deur Deel C van Hoofstuk 6 van die Wet, en
- (b) in terms of -
  - (i) the Supreme Court Act, 1959,
  - (ii) the Magistrate's Court Act, 1944,
  - (iii) the Attorneys Act, 1979; or
  - (iv) the Debt Collector's Act, 1998,

which ever is applicable to the enforcement of the credit agreement.

#### **48. Other Charges**

If the credit provider is titled to charge any amount referred to in section 102(1)(b) to (e) of the Act, the credit provider must not charge the consumer a higher price for any goods or services provided to or arranged for the consumer than the price charged by that credit provider for the same or substantially similar goods or services provided or arranged in the ordinary course of business on the basis of a cash transaction. If no similar goods or services are provided on the basis of cash transactions, the amount that may be charged may not exceed the actual cost at which the credit provider could procure the goods or services provided as per section 102(1) at fair market value in an arms length transaction.

### **CHAPTER 6 – DISPUTE RESOLUTION**

#### **49. Failed alternative dispute resolution**

If an alternative dispute resolution agent fails to resolve a dispute as envisaged in section 134(5) of the Act, a certificate in Form 28 must be completed by the alternative dispute, resolution agent.

#### **50. Initiating a complaint to the National Credit Regulator**

- (1) A consumer may lodge a complaint against a credit provider by:
  - (a) submitting a completed Form 29 to the National Credit Regulator by fax, mail or e-mail; or
  - (b) contacting the National Credit Regulator telephonically;

- (2) Telephonic and e-mail originated complaints may be lodged only by the complainant, not by another person on behalf of the complainant.
- (3) If a person completes and submits Form 29 on behalf of complainant, the complaint must be accompanied by a written consent signed by the complainant.
- (4) A third party may act on behalf of a complainant only if the complainant has consented in writing.
- (5) A consent contemplated in sub-regulation (4) must contain the following:
  - (a) name of the third party;
  - (b) name of the credit provider;
  - (c) full name and signature of the complainant;
  - (d) date of signing of the agreement to which the complaint relates; and
  - (e) details of the complaint.

#### **51. Initiating applications to Tribunal**

An application initiated by the National Credit Regulator to the Tribunal in terms of section 137 of the Act must be in Form 30 and accompanied by -

- (a) the documents specified in Form 30; and
- (b) any additional information that the Tribunal considers appropriate in the circumstances.

#### **52. Notice of non-referral**

A notice of non-referral issued in terms of sections 139(1)(a) or 140(1)(a) of the Act must be in Form 31.

#### **53. Application for referral to a different consumer court or the Tribunal**

An application to the Tribunal for an order that a matter be referred to a different consumer court or to the Tribunal in terms of section 140(4) of the Act must be in Form 32 and accompanied by -

- (a) the documents specified in Form 32; and
- (b) any additional information that the Tribunal considers appropriate in the circumstances.

#### **54. Referral to the Tribunal**

- (1) An application to the Tribunal for an order in terms of section 141(2) of the Act must be in Form 33 and accompanied by -
  - (a) the documents specified in Form 33; and
  - (b) any additional information that the Tribunal considers appropriate in the circumstances.

- (2) A referral to the Tribunal, whether by the National Credit Regulator in terms of section 140(1) of the Act or by a complainant in terms of subsection 141(1), must be in Form 32.

## CHAPTER 7 – RECORD KEEPING AND REGISTERS

### *Part A – Record-keeping*

#### **55. Records of registered activities to be retained by registrants**

- (1) In addition to any records that must be kept in terms of the Act, a registrant must maintain the following records relating to its registered activities in a register, which register may be kept in electronic format:
- (a) Debt councillors, in respect of each consumer;
    - (i) application for debt review;
    - (ii) copy of all documents submitted by the consumer;
    - (iii) copy of rejection letter (if applicable)
    - (iv) debt restructuring proposal;
    - (v) copy of an order made by the tribunal and/or the court;
    - (vi) copy of clearance certificate;
  - (b) Credit providers, in respect of each consumer:
    - (i) application for credit;
    - (ii) application for credit declined;
    - (iii) reasons for decline of application for credit;
    - (iv) pre-agreement statement and quote;
    - (v) credit agreement entered into with consumer;
    - (vi) documentation in support of steps taken in terms of section 81(2) of the Act;
    - (vii) records of payments made;
    - (viii) documentation in support of any steps taken after default by consumer;
  - (c) Credit providers, in respect of operations:
    - (i) record of income, expenses and cash flow;
    - (ii) credit transactions flows;

- (iii) management accounts and financial statements;
  - (d) Credit bureaux,
    - (i) All documents relating to disputes, inclusive of but not limited to:
      - a. documents from the consumer;
      - b. documents from the entry responsible for disputed information;
      - c. documents pertaining to the investigation of the dispute;
    - (ii) Correspondence addressed to and received from sources of information as set out in section 70(2) of the Act and Regulation 18(7) pertaining to the issue of disputed information.
- (2) Records that are required to be maintained in terms of the Act must be -
- (a) maintained in paper or electronic format;
  - (b) readily accessible for a period of three years, subject to regulation 56.
- (3) A record that is kept in electronic format must be reproduced in paper form within a period of five business days after a request by the National Credit Regulator.
- (4) If a person has appointed a third party to maintain the person's records, as required by this Act:
- (a) that appointment does not absolve that person of any responsibility to maintain the records in accordance with the Act; and
  - (b) that person must ensure that any records maintained by the third party will be available without any undue delay.
- (5) All records must be kept for a period of three years from the earlier of the date on which the registrant created, signed or received the document.

**56. Time for keeping records of credit applications and agreements by credit providers**

The records required to be kept in terms of section 170 of the Act must be maintained for three years -

- (a) from the date of termination of the credit agreement; or
- (b) in the case of an application for credit that is refused or not granted for any reason, from date of receipt of the application.

***Part B – Registers***

**57. National record of registration**

- (1) The register maintained by the National Credit Regulator as required in terms of section 53 of the Act must include the following information as set out in Form 34:
  - (a) the registrant's registration number with the National Credit Regulator;
  - (b) the registrant's full name;
  - (c) the registrant's trading name, if applicable;
  - (d) the registrant's identity number or registration number;
  - (e) the activities which the registrant is permitted to engage in;
  - (f) date of registration;
  - (g) conditions of registration, if any;
  - (h) whether the registration has been altered, and details thereof, if applicable;
  - (i) the registrant's contact details, including:
    - (i) physical address;
    - (ii) telephone number;
    - (iii) fax number;
    - (iv) e-mail address;
    - (v) contact person.
  
- (2) The National Credit Regulator must maintain a register of all persons whose registration has been cancelled, which register must include the following information:
  - (a) the person's registration number with the National Credit Regulator;
  - (b) the person's full name;
  - (c) the person's trading name, if applicable;
  - (d) the person's identity number or registration number;
  - (e) date of registration;
  - (f) date of cancellation of registration;
  - (g) reasons for cancellation of registration;
  - (h) any conditions of registration, if applicable;
  - (i) whether the registration had been altered, and details thereof, if applicable; and

- (j) the person's contact details, including:
  - (i) physical address;
  - (ii) telephone number;
  - (iii) fax number;
  - (iv) e-mail address; and
  - (v) contact person.
- (3) The National Credit regulator must maintain a register of all registrants registered with a Provincial regulator and must include the information as set out in Form 34.1.
- (4) The National Credit Regulator must permit any person to inspect the registers, whether at the office of the National Credit Regulator, or on its website, at no cost.
- (5) Any person may obtain copies of permitted information as provided for in section 14(c)(ii) upon completing Form 35 and making payment of the fees set out in Schedule 2.

#### **58. Register of marketing options**

- (1) The register maintained by a credit provider as required in terms of section 74(7) of the Act must contain the following records as set out in Form 36:
  - (a) the consumer's name and account number;
  - (b) the consumer's contact details;
  - (c) the options selected by the customer; and
  - (d) the date upon which the consumer selected the options;
- (2) The register must be maintained in written or electronic format, provided that the format is accessible for inspection by the National Credit Regulator;
- (3) The records contained in the register must be maintained in the register until the consumer account is closed;
- (4) If the consumer selects any of the options provided for in section 74(6), the records of earlier selections must be retained for a period of 3 years.

#### **59. Register of Agents**

- (1) The register maintained by a credit provider as required in section 163(2)(b) of the Act must reflect the following records as set out in Form 37:
  - (a) the name and address of the agent;
  - (b) the identity number of the agent, alternatively CIPRO or other official registration number;
  - (c) the date of appointment of the agent; and

- (d) a description of the activities which the agent is authorised to conduct.
- (2) The register must be maintained in written or electronic format, provided that the format is accessible for inspection by the National Credit Regulator.
- (3) If an agent's appointment has been terminated, the credit provider must:
  - (a) retain the records relating to that agent for a period of not less than 12 months from the date of termination of appointment;
  - (b) ensure that the reason for termination is stated on the record.

#### **60. Other registers to be kept by Registrants**

In addition to any registers that must be kept in terms of the Act and the information specified in regulation 55, a registrant must maintain the following information relating to activities in a register, which register may be kept in electronic format:

- (1) Debt Councillors, in respect of each consumer:
  - (a) consumer's full names and surname;
  - (b) consumer's identity number or, if the consumer does not have an identity number, passport number and date of birth;
  - (c) date of application for debt review;
  - (d) date of rejection letter issues (if applicable);
  - (e) status of the case;
    - (i) applied;
    - (ii) under assessment;
    - (iii) restructured;
    - (iv) process of payment;
    - (v) settled; or
    - (vi) defaulted.
  - (f) date of clearance certificate issued;
  - (g) if the consumer exits the debt restructuring prior to the debt being settled in full, the reasons for doing so.
- (2) Credit providers in respect of each consumer:
  - (a) consumer's full names and surname;

- (b) consumer's identity number or, if the consumer does not have an identity number, passport number and date of birth;
  - (c) date the loan was granted, amount, instalment amount and number of instalments;
  - (d) defaults in respect of each agreement;
  - (e) date on which agreement was terminated, and whether such termination was as a result of –
    - (i) settlement;
    - (ii) court judgement;
    - (iii) written off as bad debt by the credit provider;
    - (iv) transfer of cession;
    - (v) other (specify).
- (3) Credit Bureaux, in respect of each consumer on whom information is retained:
- (a) source of information;
  - (b) date of submission of information;
  - (c) contents of information that was submitted;
  - (d) to whom was the information released;
  - (e) for what purpose was the information released;
  - (f) when was the information released;
  - (g) what information was released.

### **61. Identity card of agents**

An identification card provided to an agent in terms of section 163(2) of the Act must be in Form 38.

## **CHAPTER 8 – COMPLIANCE AND REPORTING**

### ***Part A – Registered credit providers' compliance reports***

### **62. Statutory Reporting**

- (1) A credit provider must submit the following to the National Credit Regulator –
  - (a) Compliance Report;

- (b) Statistical Returns;
  - (c) Annual Statistical Return;
  - (d) Annual Financial and Operational Return;
  - (e) Assurance Review.
- (2) Any information that is required to be reported to the National Credit Regulator must be accurate and complete, and must fairly present the activities and status of the credit provider,
  - (3) Any financial information that is required to be reported to the National Credit Regulator must be prepared in accordance with generally accepted accounting practice as applied by that entity in the preparation of its financial statements.
  - (4) if requested by the National Credit Regulator, an analysis of any item contained in the forms prescribed in these regulations must be furnished to the National Credit Regulator, within 20 business days after such request.

**63. Compliance Report**

- (1) A credit provider must complete and submit a compliance report to the National Credit Regulator on an annual basis within 6 months after the financial year-end of the credit provider;
- (2) The National Credit Regulator must issue guidelines on the format and contents of the report.

**64. Statistical Return**

- (1) A credit provider whose annual disbursements exceed R 15 million must complete and submit the statistical return in Form 39 to the National Credit Regulator in respect of the quarters and by the due dates set out in the table below;
- (2) All other credit providers must complete and submit the statistical return in Form 39 to the National Credit Regulator by the 15<sup>th</sup> of February each year for the period 1 January to 31 December.

<b>Quarters</b>	<b>Reporting period</b>	<b>Due Date for Statutory Reporting</b>
Quarter 1	1 January – 31 March	15 May
Quarter 2	1 April – 30 June	15 August
Quarter 3	1 July – 30 September	15 November
Quarter 4	1 October – 31 December	15 February

**65. Annual Financial Statements**

A credit provider must submit its annual financial statements including the auditor or accounting officer's report to the National Credit Regulator, within 6 months after the credit provider's financial year-end;

## **66. Annual Financial and Operational Return**

A credit provider must submit an annual financial and operational return in Form 40 to the National Credit Regulator, within 6 months after the registered credit provider's financial year end.

## **67. Responsibility for Assurance Engagement**

- (1) A credit provider must require an accounting officer or auditor to conduct an assurance engagement in terms of regulation 68;
- (2) If a credit provider is not required by statute to appoint an accounting officer or auditor, the credit provider must appoint a member of one of the following professional bodies:
  - (a) South African Institute of Chartered Accountants (SAICA)
  - (b) Commercial and Financial Accountants (CFA)
  - (c) South African Institute of Secretaries and Administrators (ICSA)
  - (d) Institute of Administration and Commerce (IAC)
  - (e) Chartered Institute of Management Accountants (CIMA),

to report on the credit provider's financial statements and to conduct the assurance engagement in terms of Regulation 68.

## **68. Assurance Engagement**

- (1) A credit provider must require the person appointed in terms of regulation 67 to perform an assurance engagement in accordance with guidelines to be issued by the National Credit Regulator and issue a report to the National Credit Regulator on the basis of that person's findings with regard to that engagement;
- (2) A credit provider must submit the report contemplated in (1) to the National Credit Regulator within 6 months after the credit provider's financial year-end;
- (3) The report contemplated in (1) must comment on the compliance of the credit provider with the National Credit Act;
- (4) The National Credit Regulator must issue guidelines in respect of –
  - (a) the procedures which the person must follow in performing such assurance engagement, and
  - (b) the format and content of the report which must be compiled based on the engagement.

### ***Part B – Debt counsellor compliance reports***

## **69. Annual compliance report and statistical return by debt counsellor**

- (1) A compliance report submitted by a registered debt counsellor must be submitted in Form 41 to the National Credit Regulator by the 15<sup>th</sup> of February each year for the period 1 January to 31 December.

- (2) All registered debt counsellors must complete and submit the statistical return in Form 42 to the National Credit Regulator in respect of the quarters and by the due dates set out in the table below:

<b>Quarters</b>	<b>Reporting period</b>	<b>Due Date for Statutory Reporting</b>
<b>Quarter 1</b>	1 January – 31 March	15 May
<b>Quarter 2</b>	1 April – 30 June	15 August
<b>Quarter 3</b>	1 July – 30 September	15 November
<b>Quarter 4</b>	1 October – 31 December	15 February

***Part C – Credit bureau compliance reports***

**70. Annual compliance report by credit bureau**

- (1) A compliance report submitted by a registered credit bureau in terms of section 52(6) of the Act must be submitted in Form 43 to the National Credit Regulator by the 15<sup>th</sup> of March each year for the period 1 January to 31 December.

**71. Quarterly synoptic report by credit bureau**

- (1) A credit bureau must submit a quarterly report on:
- (a) The total number of complaints received;
  - (b) The nature of the complaint, classified as defined by the National Credit Regulator;
  - (c) Number of complaints that were found to be valid, partially valid and invalid, respectively;
  - (d) Number of complaints resolved and outstanding; and
  - (e) The nature and validity of complaints, in categories such as:
    - (i) inaccurate or incorrect information;
    - (ii) insufficient or incomplete information;
    - (iii) outdated information;
    - (iv) double listing;
    - (v) incorrect merging of information;
    - (vi) consumer withdrew complaint;
- (2) In terms of section 70(5) of the Act, a registered credit bureau must submit to the National Credit Regulator periodical synoptic reports in Form 44 in respect of the quarters and by the due dates set out in the table below:

<b>Quarters</b>	<b>Reporting period</b>	<b>Due Date for Statutory Reporting</b>
<b>Quarter 1</b>	1 January – 31 March	15 May
<b>Quarter 2</b>	1 April – 30 June	15 August
<b>Quarter 3</b>	1 July – 30 September	15 November
<b>Quarter 4</b>	1 October – 31 December	15 February

### ***Part D – Insurers' Periodic Synoptic Report***

#### **72. Submission of periodic synoptic report by insurers**

- (1) Submission of period synoptic reports by insurers shall be done by completing Form 45 and submitting it to the National Credit Regulator;
- (2) The synoptic report must be submitted in respect of the quarters, within 30 days after the end of the quarter, as set out below:

<b>Quarters</b>	<b>Reporting period</b>
<b>Quarter 1</b>	1 January – 31 March
<b>Quarter 2</b>	1 April – 30 June
<b>Quarter 3</b>	1 July – 30 September
<b>Quarter 4</b>	1 October – 31 December

### **CHAPTER 9 – TRANSITIONAL PROVISIONS**

#### **73. General preservation of regulations, rights, duties, notices and other instructions**

A registration issued in terms of section 15A of the Usury Act, 1968 (Act No. 73 of 1968) remains valid until the earlier of:

- (1) the date when section 105 of the Act becomes effective;
- (2) date of deregistration; or
- (3) date of cancellation of such registration.
- (3) datum van kanselling van sodanige registrasie.

### **CHAPTER 10 – PRESCRIBED FORMS**

#### **74. Forms**

Forms prescribed for purposes of these Regulations are set out in Schedule 1 to the Regulations.

#### **75. Use of Forms**

- (1) If a prescribed form of words or expression is used in conjunction with other information in a document, the document must be designed in such a manner that the prescribed form of words or expression are:
  - (a) clearly distinguishable from the other information in that document; and

- (b) at least as prominent, in respect of size and legibility, as the other information in that document.
- (2) If a prescribed form is used in conjunction with another prescribed form, each must clearly be distinguishable from the other.
- (3) A registrant may include its logo or letterhead on a prescribed Form, subject to sub regulation (4).
- (4) If a form of document is prescribed by these regulations –
  - (a) it is sufficient if a person required to prepare such a document does so in a form that satisfies all the substantive requirements as to content and design of the prescribed form; and
  - (b) any deviation from the prescribed form does not invalidate the document unless the deviation –
    - (i) fail to satisfy the requirements set out in paragraph (a);
    - (ii) negatively affects the substance of the document; or
    - (iii) is deceptive or misleading.

## 76. Electronic submission of Forms

Any Form that has to be submitted to the National Credit Regulator may be submitted electronically.

### SCHEDULE 1 – PRESCRIBED FORMS

Form No.	Section	Description
1	4(1)(d)	Application for approval by the Minister
2	45(1)	Application for registration as credit provider
3	41(1)	Application for supplementary registration
4	44(1)	Application for registration as debt councillor
5	43(1)	Application for registration as credit bureau
6	47(3)(a)	Notice when registrant becomes disqualified
7	48(3)	National Credit Regulator imposing conditions of registration
8	49(1)(a)	Registrant requesting new conditions
9	52(1)	Certificate of registration
10	58	Notice to cancel
11	25(1)(b)	Certificate to inspectors / investigators
12	54(1)	Notice of non-compliance to unregistered entities
13	55(1)	Compliance notice to registrants
14	56(1)	Objection notice
15	78(2)	Reporting to National Credit Regulator on loans excluded from reckless provisions
16	86(1)	Application for debt review
17	86(4)(b)	Notification to credit provider by debt counsellor
18	86(9)	Application to court for debt review

19	71(2)(b)(i)	Clearance certificate
20	92(1)	Small agreements quotation
20	92(1)	Pre-agreement statement for small agreements
20	92(2)(b)	Intermediate and Large agreement quotation
20	93(2)	Small agreements
21	106(5)(b)	Disclosure to consumer in respect of insurance
22	106(6)(a)	Authorisation by consumer to credit provider in respect of insurance
23	106(6)(b)	Notification of insurer by consumer
24	97(2)	Notification of change to credit provider
25	97(3)	Notification of change
26	109(2)	Statement of account for small agreements
27	124(2)	Notice of change to other account to consumer by credit provider
28	134(5)	Failed Alternative Dispute Resolution Certificate
29	136(1)	Complaint form
30	137(1)	Application by National Credit Regulator to National Consumer Tribunal
31	139(1)(a)	Notice of non-referral
32	140(4)	Application to National Consumer Tribunal
33	141(2)(a)	Application to National Consumer Tribunal
34	53(1)	National Credit Regulator's register of registrants
35	14(c)(ii)	Request for info in registries
36	74(7)(a)	Register of marketing selection made by consumer
37	163(2)(b)	Register of Agents
38	163(2)(a)	Agent's identity card
39		Credit provider's statistical return
40		Credit provider's annual financial and operational return
41		Compliance return for debt counsellors
42		Statistical return for debt counsellors
43		Credit bureaus' annual compliance
44		Credit bureaus' synoptic report
45		Insurers' periodic report